INDEX

	Page
Introductory Prayer	1
Opinions and Orders Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provisions, Statutes and Rules Involved	3
Statement of the Case	3
Reasons For Granting The Writ	7
1. The Decisions Below Are in Direct And Irreconcilable Conflict With Decisions Of Other United States Courts Of Appeal, As Well As Decisions Of The United States Supreme Court	8
2. The Decisions Below Involve Issues Of Immense Public Importance Because Of: (A) The Far-Reaching Precedent Established Thereby, And, (B) The Impact Of The Lower Courts' Proposed Remedy Upon The Residents Of Every School District In The Detroit Metropolitan Area	14
3. The Refusal Of The Lower Courts To Accord Fundamental Due Process Of Law To Forty-Three (43) Politically Autonomous And Geographically Independent School Districts, Who Are Admitted By The Lower Courts To Be Necessary Parties To This Action, Requires The Exercise By This Court Of Its Supervisory Powers	17
Conclusion	22
Appendix	23aa

TABLE OF AUTHORITIES

Page

Federal Cases:

Armstrong v. *Manzo*, 380 U.S. 545 (1965) 20

Bell v. *School City of Gary, Indiana*, 324 F.2d 209 (7th Cir. 1963), *aff'g*, 213 F. Supp. 819 (N.D. Ind. 1963) 11

Bradley v. *Milliken*, C.A.6, 72-1809-1814 (6th Cir., Dec. 8, 1972) 1

Bradley v. *School Board of the City of Richmond*, 462 F.2d 1058 (4th Cir. 1972), *aff'd by an equally divided court*, 93 S.Ct. 1952 (1973) 10

Deal v. *Cincinnati Board of Education*, 419 F.2d 1387 (6th Cir. 1969), *cert. denied*, 402 U.S. 962 (1971) 9

Goss v. *Board of Education of the City of Knoxville*, C.A.6, 72-1766-1767 (6th Cir., July 18, 1973) 9

Higgins v. *Board of Education of City of Grand Rapids*, Civ. No. 6386 (W.D. Mich., July 18, 1973) 20

Jenkins v. *McKeithen*, 395 U.S. 411 (1969) 20

Keyes v. *School District No. 1, Denver, Colorado*, 445 F.2d 990 (10th Cir. 1971) 11

Keyes v. *School District No. 1, Denver, Colorado*, 93 S.Ct. 2686 (1973) 11,12

Spencer v. *Kugler*, 326 F.Supp. 1235 (D.N.J. 1971), *aff'd*, 404 U.S. 1027 (1972) 12,13

Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) 13,14

United States v. *Board of School Commissioners of the City of Indianapolis, Indiana*, 474 F.2d 81 (7th Cir. 1973) 11

United States v. *Indianapolis*, Civ. No. 68c-225 (S.D. Ind., July 20, 1973) 15

United States v. *Texas Education Agency*, 467 F.2d 848 (5th Cir. 1972) 10

Wright v. *Council of the City of Emporia*, 407 U.S. 451 (1972) 13

Page

State Cases:

People, ex rel. Workman v. *Board of Education of Detroit,* 18 Mich. 399 (1869) 10

Constitutional Provisions:

U.S. Const. Amend. V 3,23aa

Mich. Const. Art. 8, §2 ..... 3,10,23aa

United States Statutes:

Judicial Code, 28 U.S.C. §1254(1) 2,3,23aa,24aa

Judicial Code, 28 U.S.C. §1292(b) 1,3,6,24aa

Michigan Statutes:

Mich. Comp. Laws Ann. §340.352 ..... 3,19,24aa,25aa

Act 34, Sec. 28, Mich. Pub. Acts of 1867 ..... 3,10,25aa

Act 48, Sec. 12, Mich. Pub. Acts of 1970 ..... 3,4,25aa

Federal Rules Of Civil Procedure:

Fed. R. Civ. P. 19 ..... 3,21,26aa,27aa

Fed. R. Civ. P. 54(b) 1,3,6,27aa

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1973

No.

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM,
Petitioner,

vs.

RONALD BRADLEY, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, THE GROSSE POINTE PUBLIC SCHOOL SYSTEM, Wayne County, Michigan (Grosse Pointe Schools), respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in these proceedings on June 12, 1973.

OPINIONS AND ORDERS BELOW

The judgment of the United States Court of Appeals for the Sixth Circuit is not as yet reported and is contained in the separate Joint Appendix filed herewith. This judgment was issued upon a rehearing by the Court of Appeals sitting in banc, and was decided and filed on June 12, 1973. (Joint Appendix, at 110a) A prior judgment of the Court of Appeals, decided and filed on December 8, 1972, was vacated by the granting of the rehearing in banc. The judgment of December 8, 1972 is reported in *Bradley* v. *Milliken*, C.A.6, 72-1809-1814 (6th Cir. Dec. 8, 1972).

The judgment of the Court of Appeals reviewed the following Rulings and Orders of the District Court, under the provisions of 28 U.S.C. §1292(b) and Rule 54(b) Fed. R. Civ. P.:

1. Ruling on Issue of Segregation, dated September 27, 1971 (Joint Appendix, at 17a).[1]

2. Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit, dated March 24, 1972 (Joint Appendix, at 48a).

3. Findings of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation, dated March 28, 1972 (Joint Appendix, at 53a).

4. Ruling on Desegregation Area and Development of Plan, and Findings of Fact and Conclusions of Law in Support thereof, dated June 14, 1972, reported at 345 F.Supp. 914 (Joint Appendix, at 97a and 59a, respectively).

5. Order for Acquisition of Transportation, dated July 11, 1972 (Joint Appendix, at 106a).

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on June 12, 1973 upon a rehearing by the Court sitting in banc. This Petition for Writ of Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Is a Plan of Desegregation limited to the boundaries of the School District of the City of Detroit constitutionally insufficient as a result of a finding that it has a predominantly black student enrollment and therefore it may be perceived as a black school district?

2. Is a "Metropolitan" Plan of Desegregation, intended to achieve a certain pupil racial balance in all schools in the Detroit School District and other school districts outlying therefrom,

[1] The parenthetical page references followed by the letter "a" refer to the page number of the separate Joint Appendix filed herewith. The parenthetical page references followed by the letters "aa" refer to the page number of the Appendix to this Petition commencing at page 23aa hereof.

which are independent municipal bodies corporate, legally proper in the absence of any finding of intentional discriminatory acts by such outlying school districts or in the establishment of their boundary lines, and in the absence of any finding of a causal connection between alleged discriminatory acts of State defendants and the predominance of black or white students in Detroit or the outlying school districts?

3. Have all school districts other than Detroit, potentially the object of a "Metropolitan" Plan of Desegregation, been denied due process of law: (1) by their exclusion from any effective participation in the District Court proceedings culminating in its Rulings on De Jure Segregation in Detroit, sufficiency of a Detroit-Only Plan, and legal propriety of a Metropolitan Plan, and (2) by the ruling of the Court of Appeals that in a "Metropolitan" desegregation case, outlying school districts have a right to participate *only* in the remedy stage of the proceedings?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The relevant constitutional provisions, statutes and rules to the issues in this case are: U.S. Const. Amend. V; Mich. Const. Art. 8, §2; Judicial Code, 28 U.S.C. §1254(1) and §1292(b); Fed. R. Civ. P. 19 and 54(b); Mich. Comp. Laws Ann., §340.352; Act 34, Sec. 28, Mich. Pub. Acts of 1867; and Act 48, Sec. 12, Mich. Pub. Acts of 1970, which are set forth in relevant part in the Appendix to this Brief.

STATEMENT OF THE CASE

Petitioner is one of 85 independent school districts located in the Michigan counties of Wayne, Oakland and Macomb, constituting what was defined by the District Judge to be the "Detroit metropolitan area". [2] Of these 85 school districts, 43 are defendant-intervenors in this action. Of the 43 intervening districts, 34 are included within the "desegregation area" originally established by the District Court in its Order of June 14, 1972[3] (Joint Appendix, at 97a), which "desegregation area"

[2] Ruling on Propriety of Considering a Metropolitan Plan, Joint Appendix, at 49a.

[3] Vacated by the June 12, 1973 judgment of the Court of Appeals. As to its continued significance, *See* p. 16, *Infra.*

includes a total of 53 districts, encompassing 34 intervenors, an additional 18 school districts which did not intervene and are not parties to this action, plus the School District of the City of Detroit. All of these school districts are autonomous municipal bodies corporate, being geographically and politically independent and organized and existing pursuant to the laws of the State of Michigan, and are each governed by their respective duly elected boards of education.

This action was commenced in the United States District Court for the Eastern District of Michigan, Southern Division, by the Plaintiffs against the Board of Education of the City of Detroit and its Superintendent of Schools, and also against the Governor, Attorney General, State Board of Education and State Superintendent of Public Instruction of the State of Michigan. The Detroit Federation of Teachers and Magdowski, et al., a Detroit homeowners group, were permitted intervention prior to commencement of the trial.

Plaintiffs' Complaint claimed that as a result of official policies and practices of the originally named Defendants, a constitutionally impermissible racially identifiable pattern of faculty and student assignments existed within the schools of the School District of the City of Detroit.[4] Plaintiffs' Complaint, which was thus limited to the operation of the Detroit School District alone, has never been amended to include any allegations with respect to any school in any school district other than Detroit.

The trial on the merits commenced on April 6, 1971, was concluded on July 22, 1971, and concerned only the question of whether or not the Detroit Public School System was operated so as to impair the constitutional rights of the Plaintiffs within that school district.

During the trial, on July 17, 1971, intervenors Magdowski, et al., moved to join as parties the 84 school districts in the counties

[4] Plaintiffs also claimed that Section 12, Public Act 48 of the Mich. Pub. Acts of 1970 was unconstitutional as interfering with the implementation of a voluntary plan of partial high school pupil desegregation within the School District of the City of Detroit, previously adopted by its Board of Education. By judgment of the Court of Appeals reported at 433 F.2d 847 this claim of plaintiffs was disposed of by its ruling that said Section 12, Public Act 48 was unconstitutional, although that question had not yet been ruled on by the District Court.

of Wayne, Oakland and Macomb, outlying from the City of Detroit. That Motion was not acted upon until almost one year later, when the Court deemed it to be withdrawn.

The District Court issued its "Ruling on Issue of Segregation" on September 27, 1971 (Joint Appendix, at 17a), which found the existence of de jure segregation of students but found no segregation of faculty within the School District of the City of Detroit.

Although the proceedings before the District Court had theretofore been limited to the issue of unlawful segregation in the Detroit School System, on October 4, 1971[5] the District Court ordered the State defendants to submit a "Metropolitan Plan of Desegregation" for the School District of the City of Detroit, which would embrace the three counties comprising the Detroit metropolitan area. Pursuant to this Order, on January 4, 1972 the State Board of Education filed a so-called Metropolitan Plan of Desegregation, which substantially affected the interests of all 84 school districts within the three counties surrounding the City of Detroit.

Consequently, intervention in these proceedings was sought by Petitioner and 42 other school districts for the purpose of representing their interests as municipal bodies corporate and the interests of the parents and children resident therein. Although by Order of the District Court on March 15, 1972 these Motions to intervene were granted as a matter of right, the District Court simultaneously imposed certain very restrictive and burdensome conditions upon such intervention.[6] The intervening school districts filed written objections to these conditions, which objections were never acted upon by the Court.

On March 24, 1972 the District Court issued its Ruling on Propriety of Considering a Metropolitan Remedy (Joint Appendix, at 48a). Only 4 days later, on March 28, 1972, the District Court issued its "Findings of Fact and Conclusions of Law on

---

[5] Entered November 5, 1971, as of October 4, 1971.

[6] For a list of such conditions, see the dissenting opinion of Judge Kent, Joint Appendix, at 232a.

Detroit-Only Plans of Desegregation" (Joint Appendix, at 53a).

On June 14, 1972 the District Court entered its "Ruling on Desegregation Area and Order for Development of Plan of Desegregation" (Joint Appendix, at 97a) and its "Findings of Fact and Conclusions of Law in Support of Ruling on Desegregation Area and the Development of Plan" (Joint Appendix, at 59a). In the opening paragraph of its Findings of Fact, the District Court stated:

> "It should be noted that the court has taken no proofs with respect to the establishment of the boundaries of the 86 public school districts in the counties of Wayne, Oakland and Macomb, nor on the issue of whether, with the exclusion of the city of Detroit School District, such school districts have committed acts of *de jure* segregation." (Joint Appendix, at 59-60a).

Notwithstanding this candid admission, the District Court's Order of June 14, 1972 directed that final details be formulated for a plan of desegregation for the School District of the City of Detroit, involving 52 other independent school districts and ordering the transportation and transfer of pupils as between said school districts "...to the end that, upon implementation, no school, grade or classroom be substantially disproportionate to the overall pupil racial composition"[7] of all school districts within the desegregation area established by the District Court's Order.

On July 20, 1972 the District Court entered an Order declaring its principal prior Orders as final in pursuance of the provisions of Rule 54(b), Fed.R.Civ.P., and further certifying that the said Orders contained certain controlling questions of law, in pursuance of the provisions of 28 U.S.C. §1292(b).

On December 8, 1972, the Court of Appeals for the Sixth Circuit decided and filed its first judgment, which was vacated by its grant of a rehearing in banc on January 16, 1973.

On June 12, 1973 the Court of Appeals for the Sixth Circuit, sitting in banc, decided and filed its judgment, from which this

---

[7] Joint Appendix, at 101-102a.

appeal is sought, affirming the District Court's Rulings that (1) Detroit was a de jure segregated school system, (2) that a "Detroit-Only" plan was constitutionally insufficient, and (3) that a metropolitan desegregation plan was "essential to a solution of this problem", and would, in all events, be implemented in this case in one form or another. The Court of Appeals, however, remanded the matter to the District Court for the narrow purpose of providing each of the outlying school districts an opportunity to present evidence to the Court that the inclusion of the students in their district would not be necessary for the implementation of the metropolitan plan to be ordered into effect.

REASONS FOR GRANTING THE WRIT

The precedent established by the Courts below may be briefly stated as follows: A core school district, judicially determined to be de jure segregated, may be "desegregated" by the cross-district transfer and transportation of pupils from and to outlying school districts for the purpose of achieving a more appropriate racial mix (as perceived by the Court and expressed in a fixed percentage of minorities) in each school in every school district involved. This may be accomplished notwithstanding the fact that (1) no proofs were taken or findings made with respect to discriminatory establishment or maintenance of the outlying districts, discriminatory acts on the part of the outlying school districts, or any intention by any of them to segregate outlying districts vis-a-vis the core district, and (2) no causal connection was established between the acts of segregation in the core school district and the racial composition of the student population in outlying school districts. The Courts below would thereby extend the remedial powers of a court to the operation of any school district within busing distance of a de jure segregated school district, irrespective of whether any relevant facts exist or were proved with respect to such outlying school district.

This precedent: (1) is in direct conflict with decisions of other United States Courts of Appeal, as well as the decisions of this Court; (2) involves issues of great importance not only to the Petitioner and its residents, but to every school district in the United States and the residents, pupils and staff thereof; and (3) sanctions the denial of fundamental due process of law to every

school district which becomes part of such a desegregation plan implemented on the authority of this case.

1. THE DECISIONS BELOW ARE IN DIRECT AND IRRECONCILABLE CONFLICT WITH DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL, AS WELL AS DECISIONS OF THE UNITED STATES SUPREME COURT.

The philosophy underlying the unprecedented and novel holdings below is perhaps best reflected in the statement by the District Judge, during the Pre-trial conference on October 4, 1971:

> "A large metropolitan area such as we have in our case can not be made the subject of instant integration. We must bear in mind that the task we are called upon to perform is a social one, which society has been unable to accomplish. *In reality, our courts are called upon, in these school cases, to attain a social goal, through the educational system, by using law as a lever.*" (emphasis added) (Joint Appendix, at 40-41a)

Judge Kent, in his dissenting opinion, also observed:

> "...[I] am persuaded that those who subscribe to the majority opinion are convinced, as stated in the slip opinion of the original panel, 'big city school systems for blacks surrounded by suburban school systems for whites cannot represent equal protection of the law.' While that statement has been removed from the opinion of the majority, yet the premise upon which the statement was obviously based must necessarily form the foundation of the conclusions reached in the majority opinion."[8]

In the process of accomplishing this social goal of preventing a predominantly black school system from being surrounded by predominantly white school systems, the Courts below have placed themselves in square conflict with the Courts of Appeal for

---

[8] Joint Appendix, at 224a.

other Circuits, as well as the decisions of this Court.[9] This conflict arises because the Courts below have required a metropolitan desegregation plan to be implemented so as to effect what they perceive to be a more appropriate racial balance, *without any findings of purposeful segregation as between Detroit and its outlying area and without any finding of a causal relationship between the intra-Detroit segregative acts and the racial demographic patterns of the metropolitan area.* As observed by Judge Kent in his dissenting opinion:

> "Without proof with regard to segregatory activities within the other school districts or in regard to district boundaries any conclusion by the District Court or by this Court that school district boundaries of other districts had the effect of maintaining or creating unconstitutionally segregated schools within the City of Detroit is obviously based on irrelevant, unsubstantial evidence or totally unsupported assumptions." Joint Appendix, at 222a.
>
> ***
>
> "I know of no authority which would permit a Court to announce a conclusion, based upon a violation of the Constitution, absent the taking of proofs to establish such constitutional violation, which proofs the District Judge stated he did not take in this case." Joint Appendix, at 225a.

---

[9] It should be noted, as an additional reason for granting Certiorari, that the judgment below is also in direct conflict with other decisions of the Sixth Circuit. Although expressly denied by the majority to be in conflict with its prior decision in *Deal* v. *Cincinnati Bd. of Education*, 419 F.2d 1387 (6th Cir. 1969), *cert. denied*, 402 U.S. 962 (1971), it is inconceivable that anything but a square conflict could be acknowledged—unless the social considerations perceived by the majority compelled the Court to carve an exception out of *Deal* to take care of "big city" problems. Judge Weick pointed out that the majority opinion is in 'irreconcilable conflict' with *Deal*, ". . . .with the unfortunate result that acts which do not violate the Constitution in Cincinnati, are held to be unconstitutional in Detroit." Joint Appendix, at 197a. *See also* dissenting opinion of Judge Kent regarding *Deal*, Joint Appendix, at 228a. For the most recent example of an opinion of the Sixth Circuit, also in conflict with the majority opinion, *see Goss* v. *Bd. of Education of the City of Knoxville*, C.A.6, 72-1766-1767 (6th Cir., July 18, 1973), sitting in banc, wherein the Court stated: "While it is true that some schools in the Knoxville system will remain identifiably black or white on the basis of pupil enrollment, this is largely the result of several concentrations of blacks in the area . . . .'

The opinion of the 4th Circuit in *Bradley* v. *School Board of the City of Richmond*, 462 F.2d 1058 (4th Cir. 1972), *aff'd by an equally divided Court*, 93 S.Ct. 1952 (1973), represents the Court of Appeals decision most clearly in square conflict with the holding of the Circuit Court below. In *Richmond*, the 4th Circuit rejected the "metropolitan" approach to school desegregation, and refused to affirm the cross-district transfer of students by the consolidation of 3 independent school districts in order to "desegregate" the predominantly black school district of the City of Richmond. The Court stated, at page 1064:

> "But we think the adoption of the Richmond Metropolitan Plan in toto by the district court, viewed in the light of the stated reasons for its adoption, is the equivalent, despite disclaimer, of the imposition of a *fixed racial quota*. The Constitution imposes no such requirement, and imposition as a matter of substantive constitutional right of any particular degree of racial balance is beyond the power of a district court." (emphasis added)

In referring to the fact that the reason for the concentration of blacks in cities is not precisely known, the 4th Circuit stated, at 1066:

> "Whatever the basic causes, it has not been school assignments, and school assignments cannot reverse the trend."

The conflict between *Bradley* v. *Richmond* and the decisions below is even more apparent in light of the fact that although Virginia was historically a dual school system state, the State of Michigan has prohibited segregation in its public schools for in excess of 100 years.[10]

The 5th Circuit in *United States* v. *Texas Education Agency*, 467 F.2d 848 (5th Cir. 1972), sitting in banc, held that as a

---

[10] Act 34, Sec. 28, Mich. Pub. Acts of 1867 (25aa); *People, ex rel. Workman* v. *Board of Education of Detroit*, 18 Mich. 399 (1869); Mich. Const. 1963, Art 8, Sec 2. (23aa).

predicate to the exercise by the District Court of its remedial powers there must be a finding of purposeful discrimination, supported by findings of fact, identifying the particular school found to be segregated. The concurring opinion declared at 884:

> "The importance of such a determination will be seen in some populous school districts embracing large geographical areas. There may be segregated schools which are the result of unconstitutional statutes or of official action. *There may be other one race schools which are the product of neutral, nondiscriminatory forces."* (emphasis added)

Following the authority of the 5th Circuit, the fact that there would be some predominantly white schools existing in outlying school districts, or some predominantly black schools in the Detroit School District following the implementation of a "Detroit-Only" plan of desegregation would result in *no* deprivation of constitutional rights requiring additional intervention by the Court, so long as the racial make-up of such schools is the "...product of neutral, nondiscriminatory forces." As candidly admitted by the District Court[11], however, no proofs were taken on this subject, and on the basis of the record in this case it is simply impossible to determine what factors have produced the racial make-up of the schools in the Detroit metropolitan area.

The opinion of *United States* v. *Board of School Commissioners of the City of Indianapolis, Indiana,* 474 F.2d 81 (7th Cir. 1973) is also in conflict with the decisions of the Courts below. In referring to the fact that there is no constitutional duty to remedy a racial imbalance, the 7th Circuit stated at pages 83, 84:

> "[I]ndeed, insofar as it relates to purely de facto segregation, unaided by any state action, it is the law of this circuit, *Bell* v. *School City of Gary, Indiana,* 324 F.2d 209 (7th cir. 1963), *aff'g,* 213F.Supp. 819 (N.D.Ind. 1963)."

Although modified and remanded on other grounds by the recent opinion of this Court[12], that portion of the 10th Circuit opinion in *Keyes* v. *School District No. 1, Denver, Colorado,* 445

---

[11] See Statement of the Case, *supra,* at 6.

[12] *Keys* v. *School District No. 1, Denver Colorado,* 93 S.Ct. 2686 (1973).

F.2d 990 (10th Cir. 1971), requiring intentional discriminatory acts causally connected to the segregated condition found to exist as an essential predicate to implementation of a plan for the desegregation of any school, remains viable. Indeed, the opinion of this Court in *Keyes*[13] has established that proposition which is dispositive of the issues herein presented. In *Keyes*, this Court held:

> ". . .[I]n the case of a school system like Denver's, where no statutory dual system has ever existed, plaintiffs must prove not only that segregated schooling exists but also that it was brought about or maintained by intentional state action."[14]

With respect to the relationship between a finding of intentionally segregated schools in one part of a school system, and the existence of racially identifiable schools in other parts of the school system, this Court stated that the racially identifiable schools will *not* be found to be de jure segregated if based on ". . .evidence supporting a finding that a lesser degree of segregated schooling in the core city area would not have resulted even if the Board had not acted as it did."[15] This Court further held that even if segregative intent is found to exist, a prima facie case can be rebutted ". . .by showing that its past segregative acts did not create or contribute to the current segregated condition of the core city schools."[16] The decisions below are squarely in conflict with these requirements, for the reason that the lower courts deemed irrelevant the question of segregative intent with respect to the outlying school districts, and permitted no proofs as to whether or not the segregative acts found to have been committed in Detroit in any way created or contributed to the racial make-up of the outlying schools.

The decisions below are also clearly in conflict with this Court's summary affirmance of the three judge District Court's opinion in *Spencer* v. *Kugler*, 326 F.Supp. 1235 (N.J. 1971), *aff'd*,

---

[13] *Id.*

[14] *Id.* at 2692.

[15] *Id.* at 2698.

[16] *Id.* at 2699.

404 U.S. 1027 (1972). In referring to the State's affirmative duty to remedy racially imbalanced schools, the District Court in *Spencer* stated, at page 1240:

> "Nowhere in the drawing of school district lines are considerations of race, creed, color or national origin made. The setting of municipalities as local school districts is a reasonable standard especially in light of the municipal taxing authority. The system as provided by the various legislative enactments is unitary in nature and intent and any purported racial imbalance within a local school district results from an imbalance in the population of that municipality-school district. Racially balanced municipalities are beyond the pale of either judicial or legislative intervention."

It is further submitted that the holding of the Courts below, to the effect that a plan of desegregation limited solely to the Detroit School District would be constitutionally insufficient because Detroit would be left a predominantly black school district, is also in conflict with the result of this Court's decision in *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972), which approved a desegregation plan for an area having a racial make-up of 34% white and 66% black—almost the same racial proportion which the Courts below held was constitutionally impermissible for a Detroit-only plan.[17]

Finally, and most importantly, the entire thrust and effect of the lower courts' holdings are in clear conflict with the following pronouncements of this Court in *Swann:*

> "As with any equity case, the nature of the violation determines the scope of the remedy."[18]

> "Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on

---

[17] The District Court found that in 1970-71 the racial make-up of the Detroit School District was 37.2% white and 63.8% black.

[18] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), at 16.

account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools."[19]

"If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse."[20]

"One vehicle can carry only a limited amount of baggage."[21]

All of the cases discussed in this section involved basic and controlling issues as to the scope and extent of a Federal Court's remedial powers with respect to racially imbalanced school districts. It is submitted that the judgments of the Courts below cannot be reconciled with any of these decisions, and that the resulting conflict can be effectively resolved only by prompt review by this Court.

2. THE DECISIONS BELOW INVOLVE ISSUES OF IMMENSE PUBLIC IMPORTANCE BECAUSE OF (A) THE FAR-REACHING PRECEDENT ESTABLISHED THEREBY, AND (B) THE IMPACT OF THE LOWER COURTS' PROPOSED REMEDY UPON THE RESIDENTS OF EVERY SCHOOL DISTRICT IN THE DETROIT METROPOLITAN AREA.

A.

The far-reaching nature of the precedent established by the lower courts' opinions is illustrated by considering its potential application to other cases. The reasoning below is not limited to big city-suburban school cases. Rather, *any* case against a single school district can be expanded into a "metropolitan case" at the remedy stage of the proceedings. Any school district, no matter

[19] *Id.* at 23.

[20] *Id.* at 24.

[21] *Id.* at 22.

how small, which has been found guilty of de jure segregation, may now be considered the "core" around which a desegregation remedy may be designed. The transfer of children to and from other outlying districts may be ordered to obtain a more "appropriate" racial mix in each school in the general area. This may be decreed without any finding that the outlying districts are de jure segregated or in any way were affected by the acts of the district to be "desegregated", and without any participation by the outlying districts in the judicial proceedings other than in developing the specific details of the reassignment plan. Indeed, all that is necessary to include a school district within a "Metropolitan" plan is that the "non-guilty" district be within busing distance of a "guilty" district.

When boiled down, the proposition established below is quite simple: *Any* de jure segregated school district, when combined with a racial imbalance in the schools in the surrounding geographical area, will yield a metropolitan plan at the remedy stage, limited only by considerations of distance.

Petitioner is aware of other cases pending before District Courts involving proposed metropolitan desegregation orders,[22] which will be or have been directly affected by the precedent established by the Courts below.[23] In addition, any desegregation case is now subject to expansion into a metropolitan case. It is respectfully submitted that it is vital that the judgments below be reviewed by this Court to provide clear and authoritative guidance which will be essential for a proper and orderly disposition of such other school desegregation cases.

---

[22] It is Petitioner's information and belief that such cases are at least presently pending in Boston, Buffalo and Hartford.

[23] In *United States* v. *Indianapolis*, Civ. No. 68c 225 (S.D.Ind., July 20, 1973), District Judge S. Hugh Dillin ruled that a metropolitan busing plan for Indianapolis and surrounding school systems in 8 counties would be necessary because any Indianapolis-only plan ". . .would leave a large number of schools with a minority percentage in excess of 50%, which would not only make them racially identifiable schools, but would once again accelerate white flight from those particular schools.' (Slip Opinion, at 8). Judge Dillin relied heavily on the judgment of the Court of Appeals below in support of his opinion.

B.

In addition to the precedent which will be established, this case is also of immense importance warranting review by this Court simply on the basis of its impact on the people of the Detroit metropolitan area. The true impact of this case is fully illustrated by only one part of the "baggage" which the District Court would have this cause carry—the number of children involved.

Although the District Court's Ruling on Desegregation Area and Development of Plan, dated June 14, 1972, was vacated in part by the Court of Appeals[24], it remains fully illustrative of the magnitude of a plan which the District Court considered necessary to implement a remedy pursuant to its findings on Detroit-only plans and metropolitan plans, which were sustained by the Court of Appeals.

There are approximately 1 million children in attendance in the schools of 85 autonomous and geographically independent school districts in the three counties of Wayne, Oakland and Macomb, constituting what was defined by the District Court as the Detroit Metropolitan area. Of these 85 school districts, 53 were included in the Desegregation Area defined by the District Court as being necessary to provide enough white students, when combined with the students residing in the City of Detroit, to create a racial mix within each school in the desegregation area roughly proportionate to the population of the Detroit Metropolitan area. The total number of students involved in the District Court's 53 district desegregation area, based on 1971-72 population figures, was 779,000; 276,000 in Detroit and 503,000 in the 52 suburban districts.

Since the effect of the decisions below is to require the cross-district transfer of pupils to the end that after such transfer no

---

[24] Although substantially vacated, the Court of Appeals continued in existence the Desegregation Panel established in such Order. *See* Joint Appendix, at 99a. In addition, it is quite apparent that this action was taken only to correct what the majority of the Court of Appeals perceived to be a technical defect in the proceedings below with respect to those 18 school districts included in the District Court's Desegregation Order which had not sought intervention.

school in Detroit will be predominantly black, or perceived as black when viewed against other schools in the metropolitan area, *any* plan which is devised by the District Court to implement this transfer will, of necessity, require the reassignment of hundreds of thousands of students. The fact that the Court of Appeals has vacated the Order delineating the exact geographical area and the number of students to be involved does not vitiate the immense importance of this Court reviewing the decision at this time. The die has been cast, and the inevitable consequences to Petitioner and dozens of other school districts suburban to Detroit have been determined with sufficient certainty to warrant immediate review by this Court.[25]

3. THE REFUSAL OF THE LOWER COURTS TO ACCORD FUNDAMENTAL DUE PROCESS OF LAW TO FORTY-THREE (43) POLITICALLY AUTONOMOUS AND GEOGRAPHICALLY INDEPENDENT SCHOOL DISTRICTS, WHO ARE ADMITTED BY THE LOWER COURTS TO BE NECESSARY PARTIES TO THIS ACTION, REQUIRES THE EXERCISE BY THIS COURT OF ITS SUPERVISORY POWERS.

In order to adequately present to the Court the basis upon which Petitioner claims a denial of due process, further elaboration of the proceedings in the District Court is necessary.

---

[25] In addition to pupil reassignment and transportation, the June 14, 1972 Order of the District Court required that employees be reassigned to work for other school districts in order to have a racial balance of the faculty through the metropolitan area, notwithstanding the fact that in its September 27, 1971 Ruling on Issue of Segregation, the District Court specifically found that Detroit had not been guilty of faculty segregation. Also, governance, finance and administrative arrangements between the several school districts were to be modified pursuant to the Court's Order. See Joint Appendix, at 104a. Finally, the dollar cost to the educational process is also a factor which should not be overlooked. For example, in its July 11, 1972 Order for the purchase of buses the District Court determined that $3,000,000 would be required to purchase 295 buses, necessary only for *partial* implementation of its plan. The multiple millions of dollars that would be required for the purchase of additional buses for full implementation, plus operating expenses of student transportation on this magnitude, together with the in-service training of teachers ordered by the Court, etc., is inestimable.

During the course of the trial on the merits the District Judge stated from the bench, on June 24, 1971: ". . .[A]s I have said to several witnesses in this case: 'How do you desegregate a black city, or a black school system;' ".[26] Soon thereafter, a Detroit homeowners group, Magdowski, et al., (which had previously been permitted intervention, *without* conditions), filed a motion on July 17, 1971, requesting the District Court to join the additional 84 school districts in Wayne, Oakland and Macomb counties so that "complete relief [can] be awarded to plaintiff", and because without such districts there would be an "unconstitutional burden on intervening defendant, in that the resulting school district of the City of Detroit would be and will remain as established by the proofs already submitted an inferior school district." This motion was never ruled upon by the Court, and was deemed by the Court to be withdrawn almost one year later.

Because of the District Court's Order of October 4, 1971 requiring the State defendants to submit a "Metropolitan Plan of Desegregation", and the filing of such a Plan by the State Department of Education on January 4, 1972, Petitioner and other suburban school districts were suddenly confronted with the dilemma of either being subject to a judicial remedy without ever having had the opportunity to be heard, or of seeking intervention. Although intervention was sought and granted by the District Court on March 15, 1972, it proved to be illusory indeed. The District Judge imposed extremely restrictive conditions on the participation of the intervenors,[27] even though intervention was granted of right. Then, the rapid succession of events which took place is as follows.

On the day intervention was granted, the District Court advised the intervening school districts that the Court had previously set March 22, 1972 as the date for filing briefs on the legal propriety of a "Metropolitan Plan of Desegregation". Consequently, the intervening school districts had exactly one week to prepare and present to the District Court their legal arguments in the form of written briefs with respect to such an important and

[26] Joint Appendix, at 243a.

[27] *See* footnote 6, *supra*.

complex issue. On March 24, 1972, only two days following the due date for such briefs, the District Court issued its "Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit" (Joint Appendix, at 48a). Considering the fact that 7 separate briefs totaling 112 typewritten pages were simultaneously filed on March 22,[28] it perhaps is all too apparent that the District Court was predisposed as to its Ruling, which was written and distributed within 36 hours after briefs were filed.

On March 28, 1972 the District Court commenced taking testimony on a Metropolitan Plan of Desegregation, which was the first opportunity which the intervening school districts' attorneys had to appear in the District Court to participate in the proceedings. Only 2 hours later the District Court distributed its "Findings of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation" (Joint Appendix, at 53a), concluding that a Metropolitan Plan was not only proper, but necessary.

Thus, by the District Court's control over the timing of events which occurred upon intervention, Petitioner was effectively foreclosed from any meaningful participation in the proceedings relative to the necessity or propriety of a Metropolitan Plan. Indeed, it is respectfully submitted that the District Court had determined prior to intervention that it would be necessary to desegregate the Detroit public schools by use of Petitioner's school children, and consequently the fundamental predicates for the imposition of judicial sanction - claim, proof, finding of a wrong and causation - were either ignored by the District Judge or intentionally given minimal consideration.

Under the law of the State of Michigan, Petitioner is a legally autonomous and geographically independent municipal body corporate, having the power to sue and be sued.[29] As such, Petitioner was and is entitled to fundamental rights of due process of law, including the opportunity to be heard in a meaningful way.

---

[28] In addition, at this time the United States filed a 27 page memorandum in connection with its Motion to Intervene.

[29] Mich. Comp. Laws Ann., §340.352. (24aa).

> "A fundamental requirement of due process is 'the opportunity to be heard.' . . .It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965).
>
> "We have frequently emphasized that the right to confront and cross-examine witnesses is a fundamental aspect of procedural due process." *Jenkins* v. *McKeithen*, 395 U.S. 411, 428 (1969).

Petitioner never had an opportunity to participate in a trial of the essential basic issues concerning de jure segregation and the necessity of a Metropolitan desegregation plan for Detroit.[30] The failure to afford Petitioner an opportunity to be heard when the basic issues which so vitally affected it were being judicially determined, constitutes a blatent denial of fundamental due process of law.[31] The Court of Appeals failed to correct this wrong. Only this Court has the power to correct the wrong done to Petitioner in these proceedings. The dissenting opinions of Circuit Judges Weick and Miller[32] underscore the denial of due process to Petitioner:

Judge Weick:

> "All school districts whose borders were being invaded were entitled, as a matter of right and not of mere grace, to be

---

[30] For an example of a case where such rights were properly safeguarded, see *Higgins* v. *Bd. of Educ. of City of Grand Rapids*, Civ. No. 6386 (W.D. Mich., July 18, 1973), where the District Court ordered joinder as parties defendant 11 suburban school districts prior to the trial on the merits of the de jure segregation claim. The District Judge stated: "Thus all parties who might be affected by any judgment of the court were given the opportunity to defend on the issues of constitutional violations charged against them by the plaintiffs." Slip opinion, at 3.

[31] As indicated by his statement from the bench on June 24, 1971, it became apparent to the District Judge that he might conclude it necessary to include suburban districts in a desegregation order. A few weeks later a Motion to join all outlying school districts was filed. At this stage of the proceedings it was still quite feasible for *all* outlying school districts to have had full and meaningful participation with respect to all three principal issues ultimately ruled on by the Court.

[32] Judge Weick, Joint Appendix, at 191a.
Judge Miller, Joint Appendix, at 239a.

made parties defendant in the case and to be accorded the same rights as any other defendants. . . .These rights were denied to the intervenors.[33]

* * *

However, in its opinion the majority did provide for amendment of pleadings on remand, making new party defendants, for intervention, and for offering additional testimony. These provisions are wholly illusory with respect to the issues of segregation, the 'Detroit-Only Plan' and the 'Metropolitan plan', as the opinion expressly excludes these issues from reconsideration upon remand." Joint Appendix, at 206a.

Judge Miller:

"Parties to be affected and against whom relief is sought should be accorded, in compliance with basic principles of due process, an opportunity to be heard at a meaningful time and in a meaningful manner not only with respect to the ultimate scope of the remedy to be fashioned, but also with respect to important, significant and perhaps even controlling issues, including the issue of segregation, a 'Detroit only' school plan and the propriety of a metropolitan remedy. . . .Until this is done our expression of view on the merits of the several questions is uncalled for and ill-advised. *To permit these additional parties to be heard only in the restricted sense set forth in the majority opinion is to deny them basic rights guaranteed not only by Rule 19, Federal Rules of Civil Procedure, but by the Constitution itself.*" Joint Appendix, at a. (emphasis added)

Insofar as the precedent thereby established, and its potential application to every other "Metropolitan" case which may arise in the future, this highly unusual treatment of the outlying school districts by the Courts below is intolerable. Consequently, the need for the exercise by this Court of its supervisory powers over the Courts below warrants the grant of Certiorari at this time.

[33] In addition to Petitioner and other intervening school districts, the 18 non-intervening districts are similarly affected. As Judge Weick observed of the 18 districts, "They have surely been deprived of their property rights, not only without due process of law, but without any process of law." Joint Appendix, at 207a.

CONCLUSION

For the reasons above stated, it is respectfully submitted that it is imperative that this Court issue its Writ of Certiorari to review the judgment and opinions of the Courts below.

Respectfully submitted,

HILL, LEWIS, ADAMS, GOODRICH & TAIT

By /s/ DOUGLAS H. WEST
Douglas H. West

By: /s/ THOMAS E. COULTER
Thomas E. Coulter

Attorneys for the
Grosse Pointe Public School System
3700 Penobscot Building
Detroit, Michigan 48226
962-6485

Dated: August 6, 1973

APPENDIX

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V provides:

> AMENDMENT V – CAPITAL CRIMES; DOUBLE JEOPARDY; SELF - INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY
>
> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Michigan Constitution of 1963, Art. 8, § 2 provides:

> Free public elementary and secondary schools; discrimination.
>
> SEC. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

UNITED STATES STATUTES

Judicial Code, 28 U.S.C. § 1254(1) provides:

> 1254. Courts of appeals; certiorari; appeal, certified questions
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods;

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Judicial Code, 28 U.S.C. § 1292(b) provides:

§ 1292. Interlocutory decisions

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

MICHIGAN STATUTES

Michigan Compiled Laws Annotated, § 340.352 provides:

340.352 Body corporate; powers, rights, liabilities; presumptions

SEC. 352. Every school district shall be a body corporate under the name provided in this act, and may sue and be sued in its name, may acquire and take property, both real and personal, for educational purposes within or without its corporate limits, by purchase, gifts, grant, devide or bequest, and hold and use the same for such purposes, and may sell and convey the same as the interests of such district may require, subject to the conditions of this act contained. As such body corporate, every school district shall be the successor of any school district previously existing within the same territorial limits and shall be vested with all rights of action, with the title of all property, real and personal, of the district of which it is the successor, and the indebtedness and obliga-

tions of the district superseded shall become and be the indebtedness and obligations of the succeeding district, except as otherwise provided in chapters 3, 4 and 5, part 2 of this act. Every school district shall in all cases be presumed to have been legally organized when it shall have exercised the franchises and privileges of a district for the term of 2 years; and such school district and its officers shall be entitled to all the rights, privileges and immunities, and be subject to all the duties and liabilities conferred upon school districts by law.

Act 34, Sec. 28, Mich. Pub. Acts of 1867 provides:

(2271) Sec. 28. All residents of any district shall have an equal right to attend any school therein: *Provided,* That this shall not prevent the grading of schools according to the intellectual progress of the pupils, to be taught in separate places when deemed expedient.

Act 48, Sec. 12, Mich. Pub. Act of 1970 provides:

388.182 Attendance provisions, implementation; conditions. [M.S.A. 15.2298(12)]

Sec. 12. The implementation of any attendance provisions for the 1970-71 school year determined by any first class school district board shall be delayed pending the date of commencement of functions by the first class school district boards established under the provisions of this amendatory act but such provision shall not impair the right of any such board to determine and implement prior to such date such changes in attendance provisions as are mandated by practical necessity. In reviewing, confirming, establishing or modifying attendance provisions the first class school district boards established under the provisions of this amendatory act shall have a policy of open enrollment and shall enable students to attend a school of preference but providing priority acceptance, insofar as practicable, in cases of insufficient school capacity, to those students residing nearest the school and to those students desiring to attend the school for participation in vocationally oriented courses or other specialized curriculum.

FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. 19 provides:

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substnatial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting

a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

Fed. R. Civ. P. 54(b) provides:

Rule 54. Judgments; Costs

(b) Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counter-claim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.